Marcar Industrial Uniform Co., Inc. ***and*** **International Association of Machinists and Aerospace Workers, AFL–CIO.** Case 24–CA–6201

January 17, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On July 18, 1991, Administrative Law Judge Lowell M. Goerlich issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed exceptions, a supporting brief, and an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order[2] as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Marcar Industrial Uniform Co., Inc., Rio Grande, Puerto Rico, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(e) and reletter the subsequent paragraph.

''(e) Representing to employees that it would be futile for them to select the Union as their bargaining representative.''

2. Substitute the following for paragraph 2(a).

''(a) Post at its Rio Grande, Puerto Rico plant copies of the attached notice marked ''Appendix''[10] in English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.''

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT ask employees what they think about the union movement.

WE WILL NOT solicit employees to report to us about the union movement.

WE WILL NOT tell our employees that their union activities are being watched.

WE WILL NOT threaten our employees that if the Union comes into the plant we will close it.

WE WILL NOT represent to our employees that it would be futile for them to select the Union as their bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

MARCAR INDUSTRIAL UNIFORM CO., INC.

Stanley A. Orenstein, Esq., for the General Counsel.
Victor M. Comolli, Esq., of San Juan, Puerto Rico, for the Respondent.
Juan L. Maldonado, of Rio Piedras, Puerto Rico, for the Charging Party.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge credited the testimony of employee Monge that Plant Manager Gadol told her that ''[T]he union is not going to come in here, not even by force,'' but he made no finding that this separately violated the Act, and the General Counsel excepts. We find merit in the exception and find that Gadol violated Sec. 8(a)(1) by implying that it was futile for the employees to select the Union as their bargaining representative.

[2] The General Counsel excepted to the failure to order that the notice to employees be posted in both English and Spanish. We agree with the General Counsel and we shall modify the recommended Order in this respect.

DECISION

STATEMENT OF THE CASE

LOWELL M. GOERLICH, Administrative Law Judge. The charged filed by International Association of Machinists and Aerospace Workers, AFL–CIO (the Union) on July 9, 1990, was served on Marcar Industrial Uniform Co., Inc.,[1] the Respondent, by certified mail on July 10, 1990. A complaint and notice of hearing was issued August 23, 1990. In the complaint, among other things, it was alleged that the Respondent had engaged in the violation of Section 8(a)(1) of the National Labor Relations Act (the Act).

The Respondent filed a timely answer denying that it had committed the unfair labor practices alleged.

The matter came on for hearing on March 14, 1992, at Hato Rey, Puerto Rico.

Each party was afforded a full opportunity to be heard, to call, to examine and cross-examine witnesses, to argue orally on the record, to submit proposed findings of fact and conclusions, and to file briefs. All briefs have been carefully considered.

On the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT,[2] CONCLUSIONS, AND REASONS THEREFOR

I. THE BUSINESS OF THE RESPONDENT

At all times material, the Respondent, a corporation authorized to do business in the Commonwealth of Puerto Rico, has been engaged in manufacturing industrial uniforms and operates a facility located at Rio Grande, Puerto Rico (the plant).

In the normal course and conduct of its business operations described above, the Respondent annually derives gross revenues in excess of $500,000 and annually purchases and receive goods and materials valued in excess of $50,000 directly from suppliers located outside the Commonwealth of Puerto Rico.

The Respondent is, and has been at all times material, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

Facts

At all times material, Ralph Gadol (Gadol), has been, and is now, plant manager of the Respondent, action on its behalf, and at all times material has been, and is now, a supervisor within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(2) of the Act.[3]

Additionally, the parties stipulated that ''Angel Luis Maldonado, who is also known as Wiso, his nickname, Maldonado was a Section 2(11) supervisor and a Section 2(13) agent as defined by the National Labor Relations Board as amended during the period of time contemplated by the complaint in this case, number 24–CA–6201.''

The General Counsel offered the following evidence as his prima facie case.

The Union commenced the organization of the Respondent's employees in March 1990. The organizational efforts took the form of organizational meetings, distribution of handbills, and solicitation of union card signers. Sonia Santos Monge, an employee of the Respondent, participated in the union organizational campaign by passing out cards and distributing ''papers'' outside the plant. She also attended union meetings. Gadol observed Santos Monge in the presence of Juan L. Maldonado, the Union's representative.

On May 11, 1990, Gadol engaged Santos Monge in conversation outside the office in the plant. Gadol asked Santos Monge ''what did [she] think of the movement,'' she answered that ''she couldn't say because [she] wasn't very sure of what was going on.'' Gadol responded that ''He wanted the best for his employees. That anything that [she] saw of the movement,[4] that [she] should let him know about it.''

Several days later while Santos Monge was explaining what Gadol had said to her to a group of employees. Supervisor Angel Luis Maldonado approached. Maldonado told Santos Monge that she ''should take care'' because ''they had put a person to watch [her] to see what [she] was dong in the union.'' The surveillancer was Supervisor Abigail Ramos from whom he received the information.

Again on June 7, 1990, Gadol engaged Santos Monge in conversation at her machine. Gadol asked, ''did you find out what happened to Converse? She answered ''No.'' Gadol then told her that ''they closed Converse down because of the Union . . . and the same thing that happened at Converse is going to happen here. And because the union is not going to come in here, not even by force.''

The Union filed a petition for an election on June 1, 1990. Hearing on the petition was commenced on June 19 and was adjourned. It has been concluded because the ''C'' case charge was filed in this case.

The Respondent offered Gadol as a witness for its defense. He denied categorically the statements attributed to him by Santos Monge. Thus, whether the Respondent committed unfair labor practices depends on the credibility of the witnesses.

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[1] It was stipulated that the next corporate name of the Respondent is Ropa Sultana, Inc.

[2] The facts found are based on the record as a whole and the observation of the witnesses. The credibility resolutions have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Mfg. Co.*, 259 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction of the findings, their testimonies have been discredited either as having been in conflict with the testimonies of credible witnesses or because the testimony was in and of itself incredible and unworthy of belief. All testimony has been reviewed and weighed in the light of the entire record. No testimony has been pretermitted.

[3] The Respondent admitted this paragraph in the complaint.

[4] Santos Monge explained in respect to the word movement, ''Upon using the word movement, we understood it to have to do with the union. There was no other word that we could associate with the word, movement, that didn't mean union.''

Conclusions and Reasons Therefor

I carefully observed the demeanor of both Gadol and Santos Monge and I conclude that Santos Monge was telling the truth.[5]

Accordingly, I find that the Respondent violated Section 8(a)(1) of the Act:

1. By Gadol's interrogation of Santos Monge as to what she thought about the (union) movement.[6]

2. By Gadol's solicitation of Santos Monge to report what she saw of the (union) movement.[7]

3. By Maldonado's representation that Santos Monge was being watched to see what she was doing with the Union.

4. By Gadol's clear implication to Santos Monge that if the Union prevailed the Respondent would close the plant.[8]

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act for jurisdiction to be exercised here.

2. By interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1).

3. The aforesaid unfair labor practices are unfair practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

The Respondent, Marcar Industrial Uniform Co., Inc. (Ropa Sultana, Inc.) Rio Grande, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees as to what they thought about the union movement.

(b) Soliciting employees to report what they saw of the union movement.

(c) Representing to employees that employees were being watched to see what they were doing with the union.

(d) Representing to employees that if the union came into the plant the plant would close.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act to engage in self-organization; to form, join, or assist any union; to bargain collectively through a representative of their own choosing; to act together for the purpose of collective bargaining or other mutual aid or protection; or to refrain from the exercise of any and all of these things.

2. Take the following affirmative action necessary to effectuate the policies of the Act. (a) Post at its Rio Grande, Puerto Rico plant copies of the attached notice marked ''Appendix.''[10] Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[5] In weighing the credibility of Santos Monge and Gadol I have also considered she was a current employee of the Respondent, that she had testified in the representation proceedings, that the Respondent failed to call Angel Luis Maldonado, and that the General Counsel failed to call corroborating witnesses in regard to the Maldonado incident.

[6] See *Rossmore House*, 269 NLRB 1176 (1984).

[7] See *St. Mary's Home*, 258 NLRB 1024 (1981).

[8] See *Hendrix Mfg. Co. v. NLRB*, 321 F.2d 100 (5th Cir. 1963).

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''